

FCC MAIL SECTION

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Before the
Federal Communications Commission DA 96-724
DISPATCHED BY **Washington, D.C. 20554**

In the Matter of)	MM Docket No. 96-110
)	
WKZF-FM, Inc.)	File No. BRH-950814UC
)	
For Renewal of License)	
for Station WKZF(FM))	
Bayboro, North Carolina)	

HEARING DESIGNATION ORDER

Adopted: May 7, 1996

Released: May 9, 1996

By the Assistant Chief, Audio Services Division:

1. The Assistant Chief, Audio Services Division, Mass Media Bureau, has before him for consideration: (a) the captioned application for renewal of license filed by WKZF-FM, Inc., licensee of FM Station WKZF, Bayboro, North Carolina and (b) the results of an investigation into the station's silent status.¹

2. The Commission's records indicate that WKZF(FM) has been off the air since July 24, 1993 when the previous licensee, Carolina Community Broadcasting, Inc. ("Carolina") suspended operations for financial reasons. On November 17, 1993, the Commission approved the application (File No. BALH-930907GE) for the voluntary assignment of WKZF's license from Carolina to Sunbelt Media, Incorporated ("Sunbelt"). Carolina and Sunbelt consummated this transaction on December 13, 1993. Sunbelt, however, did not return the station to broadcast operations, filing instead on August 26, 1994 an application (File No. BALH-940826GN) to assign the station's license to WKZF-FM, Inc. The Commission approved this assignment on December 23, 1994, requiring the assignee to resume operations within sixty days of consummation of the approved assignment.

3. WKZF-FM, Inc. filed on March 20, 1995 both its notification that the assignment was consummated February 20, 1995 and its request to modify the conditioned assignment, stating that it was in the process of "engineering a facility upgrade as allocated by the Federal Communications Commission." The Bureau approved the new licensee's request, modifying

¹The Mass Media Bureau has been delegated authority to designate for hearing the renewal of license applications of silent broadcast stations. See Moenkopi Communications, Inc., 8 FCC Rcd 3990 (1993).

the conditioned assignment to require operations within 240 days from the date of consummation, i.e., November 20, 1995. Letter to WKZF-FM, Inc. (Ref. 1800B3-GDG), dated July 25, 1995. On August 14, 1995, WKZF-FM, Inc. filed the referenced renewal application, reporting in Section III, Item 3 of its application that the station was still off-air and reiterating in Exhibit 2 to the application that it was "currently developing the engineering for the station to apply for the C3 allocation."

4. As the licensee's request correctly notes, the Commission approved the upgrade of the Bayboro, North Carolina allocation from Channel 250A to Channel 250C3 on August 31, 1992. Report and Order in MM Docket No. 91-237, 7 FCC Rcd 6305 (1992). The upgrade was effective November 12, 1992, and the Commission's action required that the licensee submit the appropriate application (FCC Form 301) implementing the upgrade by February 12, 1993. Our records reveal that no application implementing the C3 upgrade has been filed by any of the approved licensees since the Commission's action in August 1992. Further, the current licensee has neither notified the Commission that it resumed broadcast operations nor has it indicated that it has made any progress in implementing the C3 allocation. Thus, WKZF(FM) has been off-air for over two years, is not presently authorized to remain silent, and has not demonstrated that broadcast operations can be resumed expeditiously. Consequently, WKZF-FM, Inc. is in apparent violation of Sections 73.1740² and 73.1750³ of

²Section 73.1740(a)(4) provides that:

"In the event that causes beyond the control of a licensee make it impossible to adhere to the operating schedule of this section or to continue operating, the station may limit or discontinue operation for a period of not more than 30 days without further authority from the FCC. Notification must be sent to the FCC in Washington, D.C. not later than the 10th day of limited or discontinued operation. During such period, the licensee shall continue to adhere to the requirements in the station license pertaining to the lighting of antenna structures. In the event normal operation is restored prior to the expiration of the 30-day period, the licensee will so notify the FCC of this date. If the causes beyond the control of the licensee make it impossible to comply within the allowed period, informal written request shall be made to the FCC no later than the 30th day for such additional time as may be deemed necessary."

³Section 73.1750 provides:

"The licensee of each station shall notify the FCC in Washington, D.C. of permanent discontinuance of operation at least two days before operation is discontinued. Immediately after discontinuance

the Commission's Rules.

5. Accordingly, IT IS ORDERED, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the renewal of license application of WKZF(FM), Bayboro, North Carolina, IS DESIGNATED FOR HEARING at a time and location to be specified in a subsequent Order, upon the following issues:

- (1) To determine whether WKZF-FM, Inc. has the capability and intent to expeditiously resume the broadcast operations of WKZF(FM), consistent with the Commission's Rules.
- (2) To determine whether WKZF-FM, Inc. has violated Sections 73.1740 and/or 73.1750 of the Commission's Rules.
- (3) To determine, in light of the evidence adduced pursuant to the preceding issues, whether grant of the subject renewal of license application would serve the public interest, convenience and necessity.

6. IT IS FURTHER ORDERED, That, in the event it is determined that grant of the renewal of license application would serve the public interest, convenience and necessity, the grant will be conditioned on the expeditious resumption of operation, the precise period of time to be established in the hearing. Failure to resume operations within the time specified in the condition will result in the cancellation of the license and the deletion of the station's call letters.

7. IT IS FURTHER ORDERED, That WKZF-FM, Inc. must submit to the presiding Administrative Law Judge (with a copy to the Chief, Equal Employment Opportunity Branch) within 30 days of the release of this Order an original and one copy of an Equal Employment Opportunity Report (FCC Form 396).⁴ In the event the Chief, Equal Employment Opportunity Branch determines that WKZF-FM, Inc.'s report satisfies applicable standards, she shall so inform the presiding Administrative Law Judge. Failure to provide the required information within the specified period will, pursuant to 47 C.F.R. § 73.3568(b), result in the application's dismissal with prejudice for failure to prosecute.

8. IT IS FURTHER ORDERED, That, to inform WKZF-FM, Inc. of the issues specified against it, a copy of this Order will be mailed by certified mail/return receipt

of operation, the licensee shall forward the station license and other instruments of authorization to the FCC, Washington, D.C. for cancellation."

⁴See License Renewal Forms & Instructions (March 1995 edition), at page 8.

requested to:

WKZF-FM, Inc.
P.O. Box 12345
Jacksonville, North Carolina 28546

9. IT IS FURTHER ORDERED, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, both the BURDEN OF PROCEEDING with the introduction of evidence and the BURDEN OF PROOF with respect to the issues specified above shall be upon the LICENSEE, WKZF-FM, Inc.

10. IT IS FURTHER ORDERED, That, to avail itself of the opportunity to be heard, the licensee, pursuant to Section 1.221(c) of the Commission's Rules, SHALL FILE with the Commission, in person or by attorney, within twenty (20) days of the receipt of this Order a WRITTEN APPEARANCE stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

11. IT IS FURTHER ORDERED, That the licensee herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rules, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Stuart B. Bedell
Assistant Chief, Audio Services Division
Mass Media Bureau